

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
 :
v. :
 :
LUIS JOEL SIERRA :
 :

C.A. No. 21-00012-JJM

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before me for a report and recommendation¹ (28 U.S.C. § 636(b)(1)(B)) is Defendant's Motion to Determine Mental Competency to stand trial pursuant to 28 U.S.C. § 4241(a). (ECF No. 30). For the following reasons, I recommend that the Court find that Defendant is presently incompetent to stand trial pursuant to 18 U.S.C. § 4241(d).

Background

Defendant is charged with violating 18 U.S.C. § 844(f)(2) by maliciously attempting on June 2, 2020, during a protest turned riot in downtown Providence, to damage or destroy a Providence Police Department vehicle by means of fire, thereby creating a substantial risk of injury to the public including public safety officers performing their duties. (ECF No. 32). He was arrested and first appeared before this Court on August 14, 2020. Defendant was ordered detained due to dangerousness based on the circumstances of the offense, his unstable life circumstances at the time, and his criminal history. (ECF No. 6). Defendant subsequently moved for release from custody which was ultimately granted by the Court on December 8,

¹ Due to conflicting case law on whether a motion to determine competency is dispositive or not pursuant to 28 U.S.C. § 636, Magistrate Judge Sullivan in U.S. v. Zendran, 1:19-mj-00118 PAS (ECF No. 29 at pp.1-2, n.1) held that the "more prudent" course was to address the matter by report and recommendation, and I concur with her judgment.

2020. (ECF No. 21). Calling it an “extremely close call,” the Court revoked the prior Detention Order and released Defendant for several reasons including his need for treatment to address “long-standing mental health issues.” Id. at pp. 3-4. On February 5, 2021, Defendant’s counsel moved for the instant competency evaluation supported by the report of Dr. John P. Parsons, a forensic psychologist. (ECF No. 31-2).

In response, the Government sought a custodial evaluation by the Bureau of Prisons pursuant to 18 U.S.C. §§ 4241 and 4247(b). (ECF No. 38). Mindful of the Court’s prior Order releasing Defendant to obtain mental health treatment and also due, in part, to the increased risks at the time related to COVID in a custodial setting (ECF No. 21), this Court denied the request for a custodial evaluation without prejudice and gave the Government the opportunity to retain an expert to conduct its own evaluation. It did so and has submitted a report prepared by Dr. Christopher Matkovic, a forensic psychiatrist affiliated with Rhode Island Hospital and Brown University. (ECF No. 45). A conference was held with counsel on August 17, 2021, and neither the Government nor the Defense sought to introduce any additional evidence to the Court. It was also agreed that the reports of Dr. Parsons and Dr. Matkovic spoke for themselves, and neither party requested the opportunity to question the experts about their respective reports. The Court did, however, request that the Government submit two items to the Court which were reviewed and referenced by the experts – a video recording of an FBI interview of Defendant after his arrest and an audio recording of a phone call that Defendant made to a friend after the incident.

Discussion

By statute, the Court must determine whether Defendant is “presently suffering from a mental disease or defect” and, if so, whether that condition renders him either “mentally

incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him” or impairs his ability “to assist properly in his defense.” 18 U.S.C. § 4241(d). As the party who raised the issue of competency to stand trial, Defendant bears the burden of proving mental incompetence by a preponderance of the evidence. See U.S. v. Zendran, 1:19-mj-00118 PAS (ECF No. 29 at pp. 18-19).

Here, Defendant clears that hurdle since the record contains two medical opinions concluding that he is not presently competent to stand trial under the applicable statutory standard. Both experts are highly qualified, and neither party has challenged their expertise to opine on the applicable issues. Both experts appropriately interviewed Defendant and reviewed his history and relevant medical records. The Defense expert, Dr. Parsons, renders an unequivocal opinion, to a reasonable degree of psychological certainty, that Defendant is “cognitively impaired” and has “substantial impairment in his ability to provide meaningful participation and cooperation in the legal proceedings against him.” (ECF No. 31-2 at p. 11). The Government’s expert, Dr. Matkovic, also opines, to a reasonable degree of medical certainty, that Defendant is not competent to stand trial but equivocates with “reservations and recommendations.” (ECF No. 45 at pp. 2, 15-16).

Dr. Matkovic indicates that he felt “forced” to find Defendant incompetent at this time due to his “apparent inability to answer questions regarding legal proceedings.” Id. at p. 15. He opines that it is reasonable to expect that Defendant would be able to understand legal proceedings with more education and that his inconsistency in the ability to answer questions suggested that “he was either exaggerating deficits or unwilling to expend the effort needed to answer the questions (or both).” Id. He observes that “[t]he fact that [Defendant] has discrete areas of knowledge and the ability to attend to some questions and not others, demonstrates a

self-serving motivation which is necessary to assist in his legal defense.” Id. Ultimately, Dr. Matkovic recommends that Defendant “be educated further as to the elements of legal proceedings, ideally using structured educational modules designed to restore the accused intellectually disabled population, in order to ensure he has the information necessary to proceed.” Id. at p. 16.

After reviewing the expert reports and the entirety of the record, the Court shares Dr. Matkovic’s reservations but also feels compelled, based on the uncontroverted medical opinions of record, to conclude that Defendant is mentally incompetent to stand trial at this time. While my reservations also arise, in part, out of what Defendant said and how he handled himself during the recorded post-arrest, FBI interview and what he said during the recorded phone call, the Court must keep in mind that those events are somewhat remote in time and were followed by a period of incarceration, and that the issue presented is the “present ability” of the Defendant to understand and assist in his defense and not the ability at some point in the past. See U.S. v. Thomas, 519 F. Supp. 2d 135, 141 (D. Me. 2007).

Given the reservations and recommendations expressed by Dr. Matkovic in his report, the Government has renewed its request for a Court-ordered custodial evaluation. (ECF No. 44). Defendant objects. (ECF No. 47). I recommend that the renewed request be denied as unnecessary. First, Defendant has already been evaluated by two qualified experts who have rendered competency opinions. Second, this proposed finding of incompetence to stand trial would not be the final step in the process. If such a finding is made, the Court is then required by statute to commit Defendant to the custody of the Attorney General for hospitalization and treatment aimed at restoring competency. See 18 U.S.C. § 4241(d)(1) and (e). Such restoration

efforts are consistent with Dr. Matkovic's recommendations and should put his legitimate reservations to rest one way or the other.

Conclusion

For the foregoing reasons, I recommend that the Court DENY the Government's renewed request for an additional custodial evaluation (ECF No. 44) and FIND pursuant to 18 U.S.C. § 4241(d) that the preponderance of the evidence establishes that Defendant presently suffers from a mental disease or defect that renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. In reliance on that finding, I further recommend pursuant to 18 U.S.C. § 4241(d) that the Court ORDER that Defendant be committed to the custody of the Attorney General, who should be directed to hospitalize Defendant for treatment in a suitable facility for such a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the criminal proceedings pending against him to go forward.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 27, 2021